

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK E. TUTTLE

Appeal No. 2002-2308
Application No. 08/943,889

ON BRIEF

Before THOMAS, KRASS, and BARRETT, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 6, 8, 9 and 16-19.

The invention is directed to wireless identification devices. In particular, a push-on/push-off switch is used in a radio frequency identification device in order to conserve battery power, since the user of the device has control over when the device responds to an interrogator. The device may include a

wireless receiver, with the switch controlling the receiver so that pushing the switch toggles the receiver between being enabled and disabled.

Representative independent claim 6 is reproduced as follows:

6. A radio frequency identification device comprising:

a housing;

a battery supported in the housing and having first and second terminals of opposite polarity;

transmitter circuitry in the housing configured to provide a modulated backscatter signal by reflecting or not reflecting a carrier signal provided by an interrogator to communicate with the interrogator, to identify the device in response to an interrogation signal by the interrogator;

receiver circuitry in the housing, coupled to the transmitter circuitry, and configured to receive the interrogation signal;

a push-on/push-off switch supported by the housing and controlling whether the circuitry provides the signal to identify the device by controlling whether or not the receiver is coupled to the battery, the switch including a first conductor formed of printed thick film and having a first end coupled to the first terminal of the battery and having a second end, a second conductor formed of printed thick film and having a first end coupled to the receiver and having a second end spaced apart from the second end of the first conductor, an insulating ring having a periphery circumscribing the second end of the first conductor and the second end of the second conductor, and a diaphragm having a periphery corresponding to the periphery of the insulating ring and having a conductive face facing the second end of the first conductor and the second end of the second conductor, the conductive face of the diaphragm being biased, by the insulating ring, away from coupling the first and second

conductors; and

a latch coupled between the receiver and the switch such that each actuation of the switch toggles the receiver between being coupled to the battery and being uncoupled from the battery.

The examiner relies on the following references:

Walton	4,384,288	May 17, 1983
Kawauchi	4,501,938	Feb. 26, 1985
Froschermeier	5,525,992	Jun. 11, 1996
Brady et al. (Brady)	5,972,156	Oct. 26, 1999
		(filed Aug. 21, 1997)

Claims 6, 8, 9 and 16-19 stand rejected under 35 U.S.C.

§ 103. As evidence of obviousness, the examiner cites Walton, Froschermeier and Kawauchi with regard to claims 6, 8, 9 and 16, adding Brady with regard to claims 17-19.

Claims 6, 8, 9 and 16-19 stand further rejected under obviousness-type double patenting over either claims 1-17 of U.S. Patent No. 6,130,602 in view of Walton or claims 1-49 of U.S. Patent No. 5,963,177 in view of Walton.

Reference is made to the brief and answer for the respective positions of appellant and the examiner.

OPINION

Turning first to the rejection of claims 6, 8, 9 and 16 under 35 U.S.C. § 103, the examiner points to Walton for a

wireless identification device, having a housing 10, a battery 14, and circuitry 12, with a switch 15. Switch 15 controls whether or not the circuit is connected to the battery, enabling the device to operate. Since switch 15 enables receiver circuit 81, this allows for user control of when identification is sent.

The examiner employs Froschermeier to show an RF identifier which utilizes a modulated backscatter system for saving battery strength and concludes that it would have been obvious to have utilized the user control switch of Walton in Froschermeier's backscatter identifier in order to provide user control over the battery saving operation of the device. Appellant does not argue to the contrary.

The examiner employs Kawauchi to show a switch comprising a button having two thick film conductors, 2A and 2B, an insulative ring, 7, and a conductive-faced diaphragm, 9, concluding that it would have been obvious to have used the specific switch of Kawauchi in the wireless identification device of Walton, to make an effectively operated switch. Again, appellant does not dispute this.

Appellant argues only the "push-on/push-off" nature of the claimed switch, urging that since Walton's switch is automatically reset after a predetermined interval, the user cannot push OFF the switch in Walton. As support for this

position, appellant points to column 5, lines 1 et seq., describing a process whereby "the user initiates the identification cycle by depressing the switch 15 on the identifier 9."

We will not sustain the rejection of claims 6, 8, 9 and 16 under 35 U.S.C. § 103. It is our view that Walton does teach a "push-on/push-off" switch, as broadly claimed, in the sense that Walton's switch 15 is clearly described as a "pushbutton" at column 2, lines 1-2. It is further described thereat as a pushbutton switch "for energizing the circuit of the identifier." Thus, it appears to us, that Walton does describe a pushbutton switch which controls whether the circuitry provides the signal to identify the device by controlling whether or not the receiver is coupled to the battery, as claimed. That is, before initialization by the user, i.e., prior to the user pushing the switch 15, the receiver is not connected to the battery. Yet, after initialization by the user, the receiver is connected to the battery. Accordingly, the claimed language of a "switch...controlling whether the circuitry provides the signal to identify the device by controlling whether or not the receiver is coupled to the battery..." is met by Walton.

While appellant stresses the "push-off" language of the claim, and it appears to us that the broad language, "push-on/push-off switch," per se, is merely a "pushbutton switch," there is additional language in instant claims 6 and 16 which requires that the switch toggle between being coupled to the battery and being uncoupled from the battery or that the switch toggle between the receiver being enabled or disabled. There is absolutely no suggestion in Walton that switch 15 may operate in such a manner and the examiner has not suggested that it would. The examiner merely argues that the term "push-on/push-off" is an alternative term and that the mere teaching, by Walton, of a pushbutton switch which has a "push-on" feature is enough to meet the claim language. However, the examiner does not take into account the "toggling" language of the claims. Accordingly, we will not sustain the rejection of claims 6, 8, 9 and 16 under 35 U.S.C. § 103, since neither Froschmeier nor Kawauchi provide for the deficiency of Walton.

Further, we will not sustain the rejection of claims 17-19 under 35 U.S.C. § 103 because claims 17-19 depend from claim 16 and the additional reference of Brady also does not provide for the deficiency of Walton.

Hence, we have not sustained either of the rejections under 35 U.S.C. § 103.

We turn our attention now to the rejections based on obviousness-type double patenting.

We also will not sustain the rejections based on obviousness-type double patenting because each of these rejections is based on Walton's alleged teaching of the claimed "push-on/push-off switch" which, as discussed supra, Walton fails to show. Moreover, we note that the examiner's rejections are not entirely clear because all of claims 6, 8, 9 and 16-19 stand rejected, alternatively, over *all* of the claims of U.S. Patent No. 6,130,602, or *all* of the claims of U.S. Patent No. 5,963,177, each in view of Walton. Thus, it is not clear exactly which of the instant claims are being rejected over which of the patented claims. In making a rejection based on obviousness-type double patenting, the examiner is required to specifically point out exactly which claim or claims of the reference patent is/are being relied upon in rejecting, specifically, which claim(s) of the instant application. The examiner has failed to do that here and, so, no prima facie case of obviousness-type double patenting has been shown.

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We have not sustained the rejection of claims 6, 8, 9 and 16-19 under either 35 U.S.C. § 103 or under obviousness-type double patenting.

Accordingly, the examiner's decision is reversed.

REVERSED

JAMES D. THOMAS)	
Administrative Patent Judge)	
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ERROL A. KRASS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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